



September 5, 2002

**FILED ELECTRONICALLY**

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RE: *In the Matter of Qwest Communications International, Inc. Consolidated  
Application for Authority to Provide In-Region, InterLATA Services in Colorado,  
Idaho, Iowa, Nebraska, and North Dakota, WC Docket No. 02-148*

*In the Matter of Qwest Communications International, Inc. Consolidated  
Application for Authority to Provide In-Region, InterLATA Services in Montana,  
Utah, Washington, and Wyoming, WC Docket No. 02-189*

Dear Ms. Dortch:

On behalf of The Competitive Telecommunications Association ("CompTel"), I write to express CompTel's concerns about the manner in which the Federal Communications Commission ("FCC") is evaluating Qwest's pending Section 271 applications. CompTel already filed comments on Qwest's application for Colorado, Idaho, Iowa, Nebraska and North Dakota on July 3, 2002. CompTel and member New Edge Networks, Inc. also met with staff from the FCC and the U.S. Department of Justice to discuss our comments in greater depth. Rather than reiterate our substantive concerns about Qwest's failure to comply with the requirements of the Telecommunications Act of 1996 ("TA-96"), notably Sections 271(a) (prohibition on providing in-region, interLATA telecommunications services) and 271(b)(ii)(B) (non-discriminatory access to unbundled network elements), CompTel would like to address the Commission's procedures for reviewing these applications, which have materially impaired our members' ability to meaningfully participate in the Commission's evaluation.

The statutory deadline for approving Qwest's Section 271 application for Colorado, Idaho, Iowa, Nebraska and North Dakota is September 11. In the past two weeks, the Commission has asked interested parties to file comments on unfiled interconnection agreements that only recently were publicly disclosed by Qwest. CompTel and several of Qwest's competitors already described our concerns about Qwest's unfiled agreements, and their impact on the overall integrity of Qwest's pending applications, in our comments and reply comments. The Commission also is considering identical issues in an investigation initiated by Qwest's own

Petition for Declaratory Ruling concerning the proper interpretation of Section 252(a).<sup>1</sup> Then on Friday, prior to a holiday weekend, the Commission asked parties to file comments on Qwest's recent statements that it cannot certify that the accounts of Qwest or its Section 272 affiliate are maintained in accordance with generally accepted accounting principles ("GAAP"), which is a requirement of Section 272(b)(2) and Section 271 approval. Parties were only provided three business days to comment on Qwest's revised declarations, with no assurance that the Commission would even consider these comments as it evaluates the pending applications.

As a threshold matter, the Commission should have immediately rejected Qwest's eleventh hour submissions of the aforementioned new or restated evidence because these filings violate the Commission's own "complete when filed" rule. Indeed, it is important to note that Qwest's last minute modifications to the declarations which document its compliance with GAAP accounting actually create more uncertainty about Qwest's conformity with the statutory requirements for long distance entry. In fact, Qwest's recent submissions raise new questions; they certainly do not provide greater assurance of Qwest's current and future compliance with Sections 271 and 272. Most troubling, however, is the fact that interested parties have not been provided adequate time to respond to these filings, and the Commission cannot have time to weigh their import. When the Commission entertains such last-minute submissions by the RBOCs, it effectively forecloses competitive carriers, which do not have the same level of resources, from commenting on this newly submitted evidence. As such, the Commission is left with an unbalanced record that is prejudiced toward the applicant. CompTel believes that such an outcome is one of the reasons that the Commission adopted the "complete when filed" rule. Such an outcome certainly does not benefit the public interest.

CompTel also has concerns about the manner in which the Commission has interpreted its own *ex parte* rules. CompTel member Touch America was informed by the Commission that it must invite Qwest to all of Touch America's *ex parte* meetings to discuss Qwest's pending Section 271 applications.<sup>2</sup> This is because Touch America currently has a pending complaint against Qwest, and Touch America raised many of the allegations in its complaint in its comments concerning Qwest's pending applications. As such, the Commission applied the procedural requirements from the "restricted" complaint proceeding to Touch America's involvement in the pending Section 271 dockets, which have been designated "permit but disclose" proceedings for all other parties.<sup>3</sup> More troubling still is the fact that the Commission has broadly applied this interpretation of its *ex parte* rules, so Touch America has been foreclosed from discussing *any* issues with Commission staff, not just the allegations addressed by its complaint, without the presence of Qwest.

CompTel's concerns could be mitigated, but not eliminated, were the Commission to have applied its questionable interpretation of its own *ex parte* rules (1) only to the matters addressed by Touch America's complaint and (2) bilaterally to both Qwest and Touch America. Unfortunately, the Commission does not require Qwest to allow Touch America to attend its *ex*

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<sup>1</sup> *In the Matter of Qwest Communications International Inc., Petition for Declaratory Ruling On the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, WC Docket No. 02-89 (April 23, 2002).

<sup>2</sup> Letter from Daniel Waggoner, Davis Wright Tremaine, to Jane Mago, General Counsel, FCC, August 28, 2002.

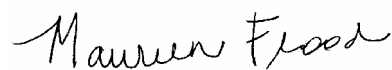
<sup>3</sup> *Id.*

*parte* meetings with Commission staff, even when Qwest discusses matters that are implicated by Touch America's complaint.<sup>4</sup> In effect, the Commission seems to be granting Qwest the ability to instantly rebut any argument advanced by Touch America, without extending the same opportunity to Touch America. Such procedural bias provides Qwest with a prejudicial advantage. Moreover, the Commission's seemingly selective application of its *ex parte* rules forecloses meaningful involvement in the Commission's Section 271 review process most profoundly to those members of the public who have chosen to exercise their statutory, and constitutional, right to petition their government for the redress of grievances.

Finally, CompTel is perplexed by the Commission's unwillingness to address Qwest's provision of illegal long distance services over the past two years. As described in our July 3 comments, the Commission has taken no enforcement action despite two publicly filed independent audits that describe Qwest's noncompliance with the divestiture requirements in the Qwest-US WEST Merger Conditions. Moreover, more than six months ago, Touch America filed a formal complaint with the Commission concerning these violations, and several carriers including CompTel member New Edge Networks have filed comments in the pending Section 271 proceedings describing their own commercial experience with Qwest's violations of Section 271(a). CompTel does not believe that the Commission can ignore the *quid pro quo* upon which the Telecommunications Act of 1996 is based: RBOCs must open their local networks as a condition of long distance entry. Qwest's provision of illegal long distance services, regardless of the scope of the violation, undermines the foundation of TA-96. As such, the Commission's apparent "approve first, ask questions later" approach conflicts with Congressional intent and the Commission's own commitment to a meaningful Section 271 review process.

For the foregoing reasons, CompTel urges the Commission to reject Qwest's pending Section 271 applications. Competitors have been effectively foreclosed from participating fully in these dockets, for the reasons described above. CompTel also is concerned about the Commission's willingness to consider last-minute submissions from Qwest that advance the approval of its applications when the Commission has been unwilling over the past two years to address Qwest's violations of the relevant statutes. In summary, CompTel urges the Commission to require Qwest to withdraw and refile its pending applications. On a prospective basis, the Commission must ensure that competitive carriers and other interested parties have a level playing field upon which to participate in the Section 271 review process.

Sincerely,



Maureen Flood  
Director, Regulatory and State Affairs

cc: C. Libertelli, M. Desai, J. Goldstein, M. Brill, W. Maher, C. Matthey, E. Yockus, M. Carowitz, G. Remondino, J. Myles, J. Jewel, P. Baker, C. Post, B. Smith, ND PSC, R. Harsch, S. Vick, UT PSC, WA UTC, S. Oxley

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<sup>4</sup> Letter from Daniel Waggoner, Davis Wright Tremaine, to Jane Mago, General Counsel, FCC, September 5, 2002.